

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:04-cr-226

UNITED STATES OF AMERICA)
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)
)
vs.) ORDER
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)
JOHNNY MACK, JR.)
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_____)

THIS MATTER is before the Court on the defendant's motion for a reduction of sentence based on the Fair Sentencing Act of 2010 (FSA) and retroactive amendments to the United States Sentencing Guidelines for crack cocaine offenses. (Doc. No. 74).

The Court previously exercised its discretion not to lower the defendant's sentence under Amendment 706. (Doc. No. 73: Order). As detailed in that decision, the defendant's true offense conduct involved more than 40 grams of crack cocaine, but the Court varied from the Guidelines range, in part, to give effect to the parties' stipulation of fewer than 5 grams, which eliminated the mandatory minimum punishment and cut the maximum in half. (*Id.* at 1-2). After considering the factors set forth in 18 U.S.C. § 3553(a) and the nature and seriousness of the danger to the community that would be posed by a reduction in the defendant's sentence, the Court found that a reduction was not warranted pursuant to USSG §1B1.10 comment. (n.1(B)). (*Id.* at 2). Those same considerations lead the Court to conclude that a reduction is not warranted under Amendment 750 and the FSA. Accordingly, the Court exercises its discretion not to reduce the defendant's sentence under the most recent retroactive Guidelines.

IT IS, THEREFORE, ORDERED that the defendant's motion (Doc. No. 74) is
DENIED.

The Clerk is directed to certify copies of this Order to the defendant, counsel for the defendant, the Community Defender, the United States Attorney, the United States Marshals Service, the United States Probation Office, and the Clerk of the United States Court of Appeals for the Fourth Circuit.

Signed: April 23, 2012



Robert J. Conrad, Jr.
Chief United States District Judge

